

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CSX TRANSPORTATION, INC.,

Plaintiff,

Lead Case No. 5:06-cv-138

v.

Hon. Robert J. Jonker

MESEROLE STREET RECYCLING, INC.,
et al,

Defendants.

ORDER DENYING MOTION FOR SANCTIONS

Pending before the court is a motion by Marquette Rail, LLC (“Marquette”) for sanctions pursuant to Rule 11(c), F.R.C.P., against Meserole Street Recycling, Inc. (“Meserole”) “for the fees and expenses incurred in responding to Meserole’s baseless and harassing motion to compel the production of Marquette’s privileged documents” (docket no. 225). The motion for sanctions was heard on December 16, 2008, along with the underlying motion to compel which was brought pursuant to Rule 37.

The motion for sanctions is frivolous in two respects. First, Rule 11 is inapplicable to discovery motions brought pursuant to Rule 37. Rule 11(d). Second, and alternatively, even if Rule 11 did apply, Marquette has failed to comply with the “safe harbor” provision of the rule set forth in sub-paragraph (c)(2).

The motion for sanctions is DENIED. In responding to the motion for sanctions, Meserole sought its costs and attorneys fees, to which it is entitled. Marquette has also filed a

motion for its attorneys fees for prevailing on the underlying motion to compel, to which it would also be entitled (docket no. 270). These costs may cancel each other out. If the parties feel otherwise, each shall file within ten (10) days (if they have not done so already) an affidavit and supporting documents justifying their respective costs. Each shall have a like period of time to respond to the other side's affidavit in a similar manner. The court reserves the right, if necessary, to bring in both counsel for a special hearing to resolve the matter.

IT IS SO ORDERED.

Dated: January 14, 2009

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge